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OFFICE OF PETITIONS

In re Application of :
Modak, et al. :
Application No. 10/633,204 : DECISION ON PETITION
Filed: July 30, 2003 :
Attorney Docket No. A33459-PCT-USA-A :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 7, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to nonprovisional application 09/775,775.

The petition is GRANTED.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the above-noted, nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii).

On March 22, 2006, Applicants filed an amendment in which they added a claim for priority to application 09/775,775. However, in an Office action mailed June 7, 2006, the Examiner indicated that the priority claim would not be entered because it was not timely filed, and notified Applicants that if they wished to submit a late claim for priority, they could do so by filing a petition pursuant to 37 CFR 1.78.

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional application included in an amendment to the first sentence of the specification following the title was previously submitted, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

As the \$1,370 petition fee was submitted twice (first on March 22, 2006, and then again with the instant petition), \$1370 has been refunded to Deposit Account No. 02-4377.

This application is being forwarded to Group Art Unit 1616 for examination.

Any inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at 571-272-3207.

A handwritten signature in black ink, appearing to read 'Anthony Knight', is written over the printed name.

Anthony Knight
Supervisor
Office of Petitions

Enc: Draft Corrected Filing Receipt (1 page)

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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	TOT CLMS	IND CLMS
10/633,204	07/30/2003	1616	1366	A33459-PCT-USA-A (070050.	33	6

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Domestic Priority data as claimed by applicant

This application is a CON of PCT/US02/03087 01/31/2002
which is a CIP of 09/775,775 02/02/2001 PAT 6,582,719

Foreign Applications

If Required, Foreign Filing License Granted: 10/30/2003

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is
US10/633,204

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Combinations of antiseptic and antibiotic agents containing medical devices

Preliminary Class

424

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